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THE PEOPLE'S LAW

ADDRESS

DELIVERED AT COLUMBUS, OHIO, MARCH 12, 1912, UPON INVITATION OF THE CONSTITUTIONAL CONVENTION

BY

HON. WILLIAM JENNINGS BRYAN

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REPORTED BY MR. FLETCHER.

IN THE SENATE OF THE UNITED STATES,
June 24, 1914.

Resolved, That the pamphlet submitted by Mr. Owen, on June 15, 1914, entitled "The People's Law," an address of Hon. William Jennings Bryan, delivered at Columbus, Ohio, March 12, 1912, upon invitation of the constitutional convention, be printed as a Senate document.

Attest:

JAMES M. BAKER, *Secretary*.

THE PEOPLE'S LAW.

Address delivered at Columbus, Ohio, March 12, 1912, by Hon. W. J. BRYAN, upon invitation of the constitutional convention.

Mr. President and gentlemen of the constitutional convention, I am sensible of the great honor you do me in inviting me to address you. You are intrusted with a work of great importance, the preparation of a constitution which may without impropriety be termed "The People's Law." Other matters they give into the hands of representatives chosen to legislate on general subjects and they permit the representatives to act according to their judgment, but in the case of a constitution they select agents for a particular purpose—agents chosen with more than usual care—agents in whom they repose the highest confidence—and then, so delicate is the task, and so binding is the instrument prepared, that they insist upon its submission to the sovereign voters for ratification before it is invested with the sanctity of the law. I know not how to manifest my appreciation of the privilege that you extend to me of advising in this capacity, except to submit for your consideration some suggestions which may be helpful to you in the discharge of the solemn duty imposed upon you by the people of the State of Ohio.

CONSTITUTIONS.

The preparation of the constitution of a great State is a serious undertaking and those who are engaged in it bear a grave responsibility. The burden has been lightened as, with the advance of years, it has been made easier to amend constitutions. The written constitution has become an American institution, and its hold upon the people is not likely to be shaken; its claim to confidence is jeopardized, however, when one generation attempts to fetter the freedom of succeeding generations by provisions that prevent a majority from amending their constitution.

Our Federal Constitution illustrates the limit to which a constitution may go in restraining the public will and in compelling a majority to submit to the rule of the minority. To amend the Federal Constitution a resolution must pass both Houses of Congress by a two-thirds vote, and the amendment submitted must then be ratified by three-fourths of the States.

A minority can thus prevent a change until the majority become so large as to give those desiring a change a two-thirds vote in the Senate and House, and then it can permanently obstruct the carrying out of the popular will on a constitutional question if it can control 13 States out of 48. We need, and I doubt not shall some day secure, an amendment to the Federal Constitution making it easier for a

majority to change the Constitution, either by striking out that which has become objectionable or by adding that which has become desirable.

The State constitution bears witness to a growing confidence in the people; they are much more easily amended as a rule than the Federal Constitution, and the later State constitutions are more easily amended than the earlier ones. When New Mexico's constitutional convention recently attempted to unduly restrict the power of amendment, Congress compelled a separate vote on this specific provision and the electors promptly modernized the method of amendment.

THE INITIATIVE.

The latest step in advance is embodied in what is known as the initiative. For some years past the initiative and referendum—they are usually linked together, but are not dependent upon each other—have found increasing favor among those who are seeking to make the Government responsive to the people's will. Of the two, the initiative is by far the more important. While the referendum enables the people to veto a public measure before it becomes a law, the initiative not only enables the people to repeal any law which is objectionable to them, but what is more vital to their welfare, permits them to enact directly any law which they desire, without recourse to the legislature. Through the initiative they can also submit an amendment to the constitution and secure a vote of the people upon it. *The initiative is, therefore, the most useful governmental invention which the people of the various States have had under consideration in recent years. It is the most effective means yet proposed for giving the people absolute control over their government.* With the initiative in a constitution, a constitution's defects, either of omission or commission, becomes comparatively harmless, for the people are in a position to add any provision which they deem necessary and to strike out any part of the constitution which they dislike.

The initiative and referendum do not overthrow representative government—they have not come to destroy but to fulfill. The purpose of representative government is to represent, and that purpose fails when representatives misrepresent their constituents. Experience has shown that the defects of our Government are not in the people themselves, but in those who, acting as representatives of the people, embezzle power and turn to their own advantage the authority given them for the advancement of the public welfare. It has cost centuries to secure popular government—the blood of millions of the best and the bravest has been poured out to establish the doctrine that governments derive their just powers from the consent of the governed.

All this struggle, all this sacrifice, has been in vain if, when we secure a representative government, the people's representatives can betray them with impunity and mock their constituents while they draw salaries from the public treasury.

INITIATIVE AND REFERENDUM.

The initiative and referendum does not decrease the importance of legislative bodies, nor do they withdraw authority from those who are elected to represent the people. On the contrary, when the peo-

ple have the initiative and the referendum with which to protect themselves, they can safely confer a larger authority upon their representatives. When the Constitution embodies the initiative and referendum the representative is not compelled to vote for any measure which his conscience bids him support, but he is coerced into a serious consideration of the merits of the measure by the fact that the people, through the referendum, may veto the measure if they do not like it. When the Constitution provides for the initiative and the referendum the people simply say to their representatives, "Do your duty, follow your judgment and your conscience, and the more accurately you interpret our wishes the less we shall have to do." The fact that the people can act through the initiative and referendum makes it less likely that they will need to employ the remedy. There will not be so many bad laws to complain of when the people reserve the right to veto, and it will be easier to secure the enactment of good laws when the people are not absolutely dependent upon legislators for the enactment of such measures as they may desire. Direct legislation exerts an indirect, as well as direct, influence, and when the system is fully established and the people thoroughly understand it, it is not likely to be employed often, because those elected to represent the people will be more in sympathy with their constituents.

Some difference of opinion exists among the friends of the initiative and referendum as to the percentage that ought to be required for the petitions which start the machinery through which the people act. It will be observed, however, that the difference of opinion on this subject reflects to some extent the degree of confidence which people have in the reform. In proportion as a person distrusts the intelligence and patriotism of the masses he is apt to demand a high percentage, partly in the hope that a high percentage may discourage entirely a resort to this method of legislation and partly because he fears that it may be resorted to without sufficient reason. The Oregon law has usually been made the basis for the fight for these reforms in the various States, and I am unqualifiedly in favor of a low percentage as against the high one. Eight per cent for the initiative on ordinary measures and 12 per cent on constitutional amendments is not unreasonably low. Neither is 5 per cent too low for a referendum vote. I am sure that experience will show that these remedies will not be resorted to without real provocation, and there is no reason why those who are public spirited enough to assume the labor of bringing questions before the voters should be taxed with unnecessary labor. The larger the percentage required, the greater the burden thrown upon those who undertake to ascertain the popular will.

California has gone a step farther and reduced the percentage below the Oregon limit where the legislature is first given an opportunity to act. This is a step in advance, and I am pleased to learn that it commends itself to your judgment.

The fact that the initiative is merely the means of bringing the subject before the voters, and that a majority of those voting must speak affirmatively before the proposed measure can have any effect, is sufficient to prevent the submission of frivolous questions or of propositions which have not a substantial support. It is not only labor, but labor accompanied by the penalties of defeat, to submit an

unpopular measure, and this will usually protect the public from any unnecessary use of the means provided by the initiative and referendum.

One point should be carefully guarded. The opponents of the initiative and referendum are usually insistent in their demand that a proposition submitted to the people must receive not merely a majority of the votes cast on the proposition, but a majority of the votes cast at the election. This is an unreasonable requirement. Legislators are elected by a plurality vote, not by a majority, and there is no reason why more than a plurality should be required for the enactment of a law by a direct vote of the people or for the adoption of a constitutional amendment. *The votes cast upon the proposition* ought to be the test; to require a majority of all the votes cast at the election is to give the negative the benefit of those votes cast at the election but not cast either for or against the proposition. Why should those who propose a reform be subjected to this disadvantage? A reform that secures a majority of the votes cast on the subject certainly has the presumption of right upon its side. The most that can be said of those who do not vote is that they are indifferent, and, if so, they ought not to be counted either way. If they fail to vote because they are too ignorant to understand the subject there is less reason why their voice should be made effective in defeating a proposition which has secured the support of a majority of those who have studied the subject and expressed themselves upon it.

THE RECALL.

The attacks which were formerly made upon the initiative and referendum have been directed more recently against what is known as the recall. But it will be found upon examination that the recall is an evolution rather than a revolution. The right to terminate an official term before its legal expiration has always been recognized. I know of no public official who is not subject to impeachment at the hands of some tribunal. The only difference between the recall, as now proposed, and impeachment, as it has been employed, is that in impeachments the trial is before a body of officials, while the recall places the decision in the hands of the people. It is simply a question, therefore, whether public servants shall be tryable only before public servants or by the sovereign voters who are the masters. If impeachment had been found entirely satisfactory, recall would not now be under discussion, but impeachment has proved unsatisfactory for two reasons. It is difficult to get officials to impeach an official; whether from fear that they will establish a precedent and endanger their own tenure of office, or whether for some other reason, may be a matter of opinion, but it is undeniably true that the present method of impeachment does not meet the requirements of to-day. Even the President of the United States, in a recent speech condemning the recall, admitted that the process of removal by impeachment must be improved upon.

A distinction should be drawn between the principle involved in the recall and the details of the measure applying the principle. There is room for a wide difference of opinion in the matter of detail and I am not inclined to be tenacious as to any particular detail, *provided the principle is clearly recognized and fully applied.*

In acting upon definite propositions the people are less liable to be mistaken than in acting upon persons. They are also less likely to be swayed by prejudice or stirred by emotion. It is not unreasonable, therefore, to require a larger percentage of the voters to a petition for a recall than in the case of the initiative or referendum. I submit, too, that it may be wise to separate the question of the recall from the candidacy of any other person. When the voter is called upon to decide upon the merits of the recall and asked to choose at the same time between the incumbent and a person against him, there is more danger of confusion of thought. A nearer approach to justice may be found in having the question of recall settled by itself and the selection of a new official determined subsequently when the relative popularity of the individuals will not draw attention away from the single question whether the incumbent has failed to discharge satisfactorily the duties of the office.

Some have suggested that to prevent the recall of an official on purely partisan grounds, the petition ought to contain the names of enough of those who voted for him to indicate the withdrawal of confidence—the petitioners' action at the first election being revealed by his oath where it can not be otherwise ascertained. This suggestion is worthy of consideration, and to require this would enforce no hardship upon the petitioners. A still further limitation has been proposed, namely, that the petition should be left with some official where it could be signed by those wishing to sign it instead of being circulated by those who would solicit signers. This would not prevent the use of the recall in an emergency, but if such a provision is inserted in the law the percentage should be made lower than in the case of a circulated petition.

In discussing the recall I have assumed that it would apply without discrimination to all officials, including the judiciary. The argument that a judge should be exempt from the operation of the recall, even when it is applied to other officials, has no sound foundation. If it is insisted that he enjoys public confidence to a greater extent than other public officials, this very argument answers itself because that superior confidence will protect the judge against injustice. In proportion as people have confidence in the bench they will be less likely to remove a judge on insufficient grounds. If a judge is wrongfully removed—after the people have been given an opportunity to investigate the charge made against him and after passion and excitement have had time to subside—if under these conditions the people still do injustice to a judge, society can better afford to risk such occasional injustice than to put the judge beyond the reach of the people. If a judge is unjustly removed the people will make amends for it when they discover their error, and the vindication that the judge will receive when the error is corrected will more than compensate him for any mortification that he may suffer in the meantime. It is not necessary to reply to the argument that the recall will make cowards of judges; the judge who would be swerved from his duty by fear of a recall would not be fit for the place. Possibly the recall may serve as a sifting process with which to eliminate those unworthy to wear the ermine. In fact, it would more than justify itself if it removed from the list of aspirants all lawyers who lack the courage to do their duty regardless of consequences. If there is any position in which we need rigid, uncom-

promising uprightness, it is upon the bench, and the recall, instead of menacing the independence of the judiciary, is more likely to improve the character of those who occupy judicial positions.

With the recall, official terms may with safety be made longer.

And speaking of the length of terms, the tendency is toward making an Executive ineligible to reelection. His duties are so responsible and his influence so extended that he should be free to devote his best energies to public affairs, and no one can devote his best energies to the public if his vision is clouded by political aspirations or his judgment perverted by personal considerations. The State needs a quickened conscience and an unbiased judgment in its Executive, and ineligibility to reelection largely contributes toward both. A governor may misuse the patronage at his disposal if his heart is bent upon another term—he is much more apt to than if his sole purpose is to win an honorable place in history by fidelity to his oath of office.

ELECTIONS.

The constitution—which you are preparing—will designate the means by which the electors will exercise their sovereign power at the polls. It may be taken for granted that you will employ what is known as the Australian ballot, which insures secrecy. While we admire the courage displayed by those who openly announce a position and accept whatever responsibility may come with the announcement, we can not be blind to the fact that, under present industrial conditions, an open ballot jeopardizes the occupation of the employees when the employer is unprincipled enough to attempt to force his political views upon those who work for him. The secret ballot is the only means that we now have of safeguarding voters who are industrially dependent upon others. In this connection, I may add that the reasons for secrecy do not extend to persons acting in a representative capacity. On the contrary, secrecy is intolerable in a representative. His constituents have a right to know what he does, and, therefore, most modern constitutions require a roll call on all measures passing a legislative body, and usually the concurrence of a majority of all the members elected to the body—not merely a majority of those present at the time—is required for the enactment of any measure. This rule may well be extended to party caucuses. Under our system the party is inevitable, or seemingly so, and the party caucus often determines the action of all the members of the party, although the decision of the caucus depends upon the vote of a majority. Under such conditions there is no good reason why the rule applied to legislatures should not apply to the caucus. It is even more necessary because the desire to preserve the appearance of party harmony may prevent a roll call in a party caucus, unless the roll call is compulsory. Publicity is both a prevention and a purifier; the constituent can not have too much light thrown upon the conduct of his representative.

The election boards should be bipartisan, beginning with the judges who preside over the polling place and following up to the highest canvassing board of the State, where the returns are inspected and the result finally declared. Both sides should be represented; in no other way can an honest count be secured. And a bipartisan

board, to deserve the name, must be composed of members selected by the parties which they represent. A bipartisan board whose members are chosen by one side is bipartisan in name only. Experience has shown that where the dominant party selects the representatives of the minority party as well as its own representatives the minority representatives do not, as a rule, reflect the wishes or protect the rights of the minority party. The minority representatives are too often chosen because they have already been corrupted or because they are open to corruption—the word "corruption" not being used in this case to suggest actual bribery, but rather to describe that perversion of purpose that renders one unfit to speak for those whose spokesman he is assumed to be.

I beg to commend to you two Federal laws recently enacted, one prohibiting contributions from corporations, and the other compelling publicity, before the election, of the names of individual contributors and limiting the amount that candidates can expend in their own behalf—and there is no reason why a limit should not be placed upon the total amount that can be expended by others on behalf of a candidate. And while on the subject of publicity I suggest that newspapers should be required to make public the names of owners, and the names of creditors also, where the indebtedness is large enough to control the paper's policies.

PRIMARIES.

The primary is only second in importance to the election itself. The voter is limited in his choice to the candidates named on the ticket, and the naming of the candidate is, therefore, a matter which must be guarded with care. The age of the boss is passing and there is a continuing advance here and throughout the world toward the popularizing of all the methods of government. If it be true that governments derive their just powers from the consent of the governed, it necessarily follows that parties derive their just authority from the consent of the voters of the party. Legislation should be authorized which will guarantee to the voters the right to control the selection of the candidates who are to enjoy the distinction of representing the party, and provisions should also be made for nomination, by petition, of those who desire to run independent of the party organizations. The primary should include an expression on presidential candidates, and an expression of postmasters would probably be respected by the President in making appointments.

The primary laws should make provision for an expression of the voters on questions as well as upon candidates, and laws should be authorized dealing criminally with candidates who pledge themselves to specific measures and then, by official act, repudiate those pledges after election. Platforms should either be made binding or they should be prohibited. A platform has no meaning unless it is intended as a pledge, and a violation of such a pledge involves a greater degree of moral turpitude than the offenses against property rights, which we now punish severely. A pledge publicly given by a candidate, and a platform promise not openly repudiated, should be binding in law as well as in conscience.

You now have a statute embodying what is known as "the Oregon plan," which enables the voters to pledge legislators to vote for the

popular choice for United States Senator. While it seems certain that Congress will soon submit a constitutional amendment providing for the direct election of Senators, still, as a matter of precaution, this safeguard should not be surrendered until a constitutional amendment is secured.

TAXATION.

Taxation is one of the prominent subjects with which those intrusted with government have to deal. Other questions come and go, but the question of taxation remains. People may dispute about the methods to be employed in the levying and collecting of taxes, about the amount to be raised, and the manner in which it should be expended, but revenue must come in or the wheels of government stop. When we find and employ a perfect system of taxation, we shall have gone a long way toward perfection in government; until then we must approximate as nearly as we may to justice.

Adam Smith lays down a principle for the guidance of those who frame tax laws, and no better rule has been proposed, namely, that citizens should contribute to the support of the government in proportion to the benefits which they receive under the protection of the government. This is the ideal which the wise and just are struggling to embody in law. It may be taken for granted that you will consider such subjects of taxation and employ such methods as will give no just cause for complaint, or partiality, or favoritism in apportionment, assessment, or collection. The income tax seems likely to be employed by the Federal Government as a means of raising national revenue, but that is no reason why it should not also be employed in the State. It is not double taxation to levy an income tax by both State and Federal Government. We must contribute to both governments, and it is not material upon what particular kind of property the tax is levied provided it is so levied as to impose upon each citizen his proper share of both taxes. We do not call it treble taxation when we pay upon the same piece of property a certain amount for the city, a certain amount for the county, and a certain amount for the State; neither can we call it double taxation when we add another burden to the same income for the support of the General Government. The same can be said of a tax on inheritances.

Franchises are a proper subject of taxation. Being a grant from the public there is special reason why they should help to bear the public burdens. Corporations, likewise, are being more and more considered proper subjects of taxation, and the mere right to incorporate is a valuable gift to those who take advantage of it. The corporation relieves the stockholder of a part of the liability borne by the man who does business as an individual or as a member of a partnership. This limitation of liability is an advantage worth paying for. The corporation also protects a business venture from the interruption and embarrassment caused by the death of the individual or the partner. The corporation confers numerous other favors which are properly taxable.

You might with propriety leave some latitude to cities and counties in the matter of taxation. If they are allowed to experiment

with different methods the public as well as the communities will have the benefit of the experiment, and only by experiment can the relative merits of systems be determined. Provision should, of course, be made for equalizing the basis of assessment so that taxes for the larger communities can be equitably distributed regardless of dissimilarity in local systems.

CORPORATIONS.

The corporation is becoming so important a factor in business life that its consideration will demand of you both care and courage. Here more than anywhere else you will have to stand as an impartial arbiter between the rights of the whole people and the interests of a class. Powerful pressure can always be brought to bear in favor of concentrated capital. A million dollars invested in a single corporation exerts an influence more potential than ten times that sum invested in a hundred separate enterprises.

The first thing to understand is the difference between the natural person and the fictitious person called a corporation. They differ in the purposes for which they are created, in the strength which they possess, and in the restraints under which they act. Man is the handiwork of God and was placed upon earth to carry out a Divine purpose; the corporation is the handiwork of man and created to carry out a money-making policy. There is comparatively little difference in the strength of men; a corporation may be one hundred, one thousand, or even one million times stronger than the average man. Man acts under the restraints of conscience, and is influenced also by a belief in a future life. A corporation has no soul and cares nothing about the hereafter.

The corporations created by law naturally divide themselves into two classes, quasi-public corporations and purely private corporations. The corporations that engage in public business, such as a municipal corporation in a city and the transportation and other public-service corporations in the State, must be kept under rigid regulation. It is absurd to say that a corporation created by the people for the advancement of the public welfare should be left to do as it pleases, regardless of the injury which may result to the public. All public-service corporations should be under the control of officers, boards, or commissions empowered to prevent the watering of stock and the issuing of fictitious capitalization. All franchises should be for a definite period, and that not a long one. A perpetual franchise is abhorrent to every sense of justice, not only because it imposes burdens on generations yet to come, but also because it is entirely one-sided. No human being can look ahead 100 years and estimate the value of a public franchise—not to speak of 1,000 years or longer. If a body of men secure a public franchise that runs for a long period, they can give it up at any time if they find it unprofitable, but the people can not so easily correct a mistake if they sell it at too low a price. The maximum limit for such franchises should not be more than 25 years, and the charter should reserve the right of regulation and control by the Government. It should also reserve the right of public purchase at the physical valuation. At most no higher sum should be given for a franchise than the corporation paid for it.

In some instances a maximum dividend, a dividend sufficient to keep the stock at par, has been fixed in the case of public-service corporations—and such provision rests upon sound reasoning. If it is argued—and it can be with reason—that the dividends may sometime fall below a reasonable rate, this difficulty can be remedied by permitting railroads, street car companies, and other public service corporations to collect, over and above the dividend permitted a surplus sufficient to make good any shrinkage in dividends that may occur in bad years. The public does not desire to do injustice to those connected with corporations. On the contrary, you will find that the public is much more likely to be generous in dealing with what we call the property rights of corporations than corporation managers are to do justice to the public.

TRUSTS.

In regulating mercantile and industrial corporations you will have little trouble except with the large ones. By far the greater number of these corporations will do business on a scale so small that competition will prevent any extortion in price or unfairness in method. It is only when a corporation begins to enjoy a monopoly that it becomes a menace. You should, therefore, prescribe such constitutional limitations as will insure competition.

There is no middle ground between competition and Government ownership. A private monopoly is indefensible and intolerable. A private monopoly is naturally as prone to injure the public as a ferocious animal is to seek its prey. Private monopolies can not be successfully regulated. *They must be prohibited.* The gist of monopoly is in the percentage of control, not in the size of the corporation. A corporation with a capital stock of $10,000,000 may control one business absolutely, while in another business a corporation of $100,000,000 may not be able to suspend the law of competition. If a corporation controls, say, 5 per cent of the thing in which it deals, it can not control either price or the conditions under which the business is done. If, on the other hand, it controls 95 per cent of the business, competition is stifled, and those who attempt to compete must do so on the terms prescribed by the monopoly. At some point, therefore, between 5 per cent and 95 per cent the control becomes effective in the restriction of trade. This point should be ascertained as nearly as human wisdom can ascertain it, and should be the limit of growth permitted. *In case of doubt the doubt should be resolved on the side of the people.* There should be no hesitation in applying rules sufficiently strict to protect the public. A corporation has no rights except those given to it by law. It can exercise no power except that conferred upon it by the people through legislation, and the people should be as free to withhold as to give, public interest and not private advantage being the end in view.

PROTECTING DEPOSITORS.

Your constitution should authorize legislation compelling banks to insure their depositors against possible loss. Bank regulation raises a presumption of security, and, in return for this, the banks

should be required to adopt some system of guaranty which will give depositors absolute security.

I will not attempt to urge upon you any particular system for the guaranty of depositors. I am perfectly willing that the banks shall be permitted to select and operate the system themselves, but I believe that the Government should *compel* them to select *some* system and to operate it with *satisfaction to the public*. That banks are not secure is proven by the fact that every subdivision of the Government requires specific security from the banks before depositing public funds, and, if I were not afraid of using language unparliamentary, I would say that it is cowardly upon the part of the Government to protect itself and then leave the average depositor unprotected.

While I believe in the system of insurance which makes all banks liable for the failure of each individual bank, still I am willing to yield that point if the banks will find some other system that gives absolute security, but when the banker tells me that it is not right that a good bank should be made to pay the debts of a bad bank, I reply that the banker has no hesitation whatever in making a farmer sell his farm to pay the debt of a neighbor for whose indebtedness he has gone security, one who has received no benefit whatever from the loan; and the banker who refuses a loan to a farmer until the famer gets some other farmer to go his security ought not to be surprised when the farmer, in return, tells him that before he loans his money to the bank the banker ought to get other bankers to go his security.

EDUCATION.

Your constitution will deal with the matter of public instruction, and interest in this subject is so widespread that you will of course provide for universal education. In a republic where the authority rests upon the will of the people, popular intelligence is essential to good government, and the State, in self defense, must reduce to a minimum the area of ignorance and illiteracy. While the presumption can usually be given to the parent in matters connected with the training of a child, still this presumption is not conclusive and may be rebutted by facts. It can generally be assumed that a parent will guard the physical welfare of a child, and yet we would not hesitate to punish the father or mother who would deliberately cut off a boy's arm and send him out, thus disabled, to meet the competition of his fellows. No more should a parent be permitted to disable a child intellectually by depriving him of the education necessary for successful competition with those among whom he labors. To condemn a child to ignorance in a land of intelligence is even more cruel than to maim him.

The tendency of the times is to bring education closer to the people, and it would be a reflection upon this body to doubt that it will thoroughly investigate methods and equip the educational department of the Government with every modern means devised for extending the benefits of education to all, and for the raising of the standard.

If, in any section of the State or community, there are parents who really need the money which their children could earn during the period when the child should be in school, the community can

well afford to temporarily supply such parental need rather than have the burden of the family support thrown upon the children to the injury of society in general, as well as to the impairment of the child's abilities, for an injustice done a child flows on through succeeding generations.

While you provide for free education, so that there will be a school door open to every child, you, I doubt not, will find it consistent with your own views, as well as advantageous to the State, not to discourage the private schools and colleges where religious instructions can be entwined with intellectual training; for, after all, the mind is directed by the heart, and it would be of more than doubtful advantage to increase the power of the brain—power to do harm as well as to do good—if we could feel sure that back of the brain there would be a conception of life and an ideal that would direct the larger powers to the advancement of the public welfare.

COURTS.

In providing for courts I venture to suggest that you give careful consideration to the manner of selection. Different plans have been adopted in different States. In most of the States the judges are elected by popular vote for a definite term; in some, they are appointed for a definite term by the executive or by the legislature, and, I believe, in some they are appointed during good behavior. Our Federal judges are appointed for life. I am of the opinion that popular election is more in accordance with our institutions and is the system toward which we shall approach as confidence in the stability of popular government increases.

The judge, like every other officer, is the servant of the people, and there is no reason why he should be made independent of a permanent public opinion upon questions fundamental in character. The distrust of the people, manifested in the disposition of some to deprive them of the right to select the judiciary, is unfounded. Unless the sense of justice inherent in the people can be trusted in such matters we may well fear for popular government; but that sense of justice *can* be relied upon; *the people are much more apt to deal justly with judges than they are to receive justice at the hands of judges who distrust the intelligence and the good intent of the masses.*

GOVERNMENT BY INJUNCTION.

The jurisdiction of the various courts is a matter entirely in your hands, and in conferring sufficient authority to insure the enforcement of law and the preservation of order you should be careful that even the judiciary shall not encroach upon the rights of litigants. What is known as "government by injunction"—a system under which the judge combines in himself the duty of legislator, prosecutor, and judge—is obnoxious to our institutions and to the idea of justice that prevails among us. While the court must have power to enforce respect and to fine for *contempt committed in his presence,* he should not be permitted to deprive the accused of a trial jury when the alleged contempt is committed beyond the precincts of the court room and *when guilt must be established by witnesses,* as in ordinary criminal prosecutions. In such cases the right of trial by jury should not be denied.

SIMPLIFYING COURT PROCEDURE.

You are invited to consider also whether the processes of the court may not be simplified and whether restriction may not be imposed that will prevent the setting aside of verdicts and judgments upon technicalities which do not go to the merits of the case. The administration of justice becomes farcical when errors, trivial in character and effect, are allowed to prolong cases and wear out litigants.

And, I may add, in these days when all intelligent men read the newspapers, knowledge of the details of a case gained from a newspaper should not excuse one from jury service if he is a man of good character and fair-minded.

MAJORITY VERDICTS.

There is a growing tendency to substitute a majority verdict in civil cases for the unanimous verdict now generally required. While, in a criminal case, a divided jury raises a doubt, the benefit of which should be given the accused, no such situation is created by a division in a civil case. Here the plaintiff is only required to establish his claim by a preponderance of the testimony, and too large an advantage is given to the defendant if a unanimous verdict is required. While in ordinary cases this requirement does not often prevent a prompt settlement of the dispute, experience has shown that in suits against influential corporations the hung jury is frequently relied upon to force a settlement. I submit to your consideration the wisdom of permitting a verdict in such cases by a majority, two-thirds or three-fourths vote of the jury.

ON CONSTITUTIONAL QUESTIONS.

Some advocate a constitutional provision limiting the power of the court to declare a law unconstitutional to cases in which *all* the judges concur in the opinion. I am persuaded that the lawmakers are entitled to this presumption.

LABOR.

In dealing with matters affecting labor you can hardly avoid the conclusion that the Government has erred on the side of tardiness in responding to the demands made by the wage earners for the amelioration of the conditions under which they work. The fellow-servant law, for instance, has far outgrown the conditions that originally justified it, if any conditions could justify it, and there ought to be no delay in safeguarding the right of an employee to compensation for injury due to the negligence of another employee over whose movements he has no control. The Constitution should also leave the amount of recovery, in case of death or injury, to be determined by the circumstances of the case. It is a one-sided law that puts the maximum price upon a human life and then leaves the minimum to be reduced to nothing.

The Constitution should authorize employers' liability and employees' compensation laws and make the authority so specific that such laws can not be declared unconstitutional.

In the matter of hours the legislature should be authorized to prescribe what shall be regarded as a working day and the conditions under which longer hours may be compelled. If it is said that such legislation robs the employee of independence in the matter of contract, it may be replied that there is as little independence in such matters as there is in the fixing of the rate of interest. Solomon's declaration that the "borrower is servant unto the lender" stands good to-day and justifies usury laws. The employee of a great corporation is no less a servant unto the employer in the matter of hours, and it is for his protection that the maximum hours are fixed, as usury laws are fixed for the protection of the borrower. The home has claims which legislation must recognize. The home is the unit, the center of moral strength and health. Society can not tolerate a condition under which the husband and father is denied the strength which home life imparts, nor can the home be robbed with impunity of his presence and influence.

Citizenship, too, has claims that can not be ignored. If the laboring man is to be a voter, he must be allowed time to prepare himself for the discharge of the responsible duties that come with citizenship. The State needs both his judgment and his conscience, and it can hardly expect either if he is driven from his bed to his work and from his work back to his bed again, with no time for study, for reflection, and for conference with his fellows.

WOMAN AND CHILD LABOR.

If legislation is necessary to protect the adult man, it is much more necessary to protect women and children. Investigations have sometimes disclosed conditions which can not be described in parliamentary language—can not be recited without emotion. You will be sustained by your constituents if you authorize legislation which will make it impossible for women to be employed under conditions hurtful to health or that menace their social and moral welfare. You will be sustained, also, if you authorize legislation which will protect children from labor in factory or mine during the period when they ought to be in school and from all kinds of employment that will stunt their development. There is no darker page in our industrial history than that which records indifference to the welfare of children—the coining of dividends out of child blood, the darkening of the prospects of a rising generation, and the impoverishment of posterity.

I offer apologies for having trespassed so long upon your time, although I have by no means covered all the subjects with which you will be called upon to deal. I can only offer in my defense an intense interest in the work in which you are engaged and a sincere desire to acknowledge the compliment implied in your invitation by presenting such observations as I hope may be useful to you in framing an organic law for your Commonwealth. I indulge in the hope that your conclusions will be so satisfactory to your constituents that your names will be cherished by a grateful people and that this law, which the people write through you, will be worthy to endure until changed conditions compel new interpretations of the popular will.

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